

IN THE CHANCERY COURT OF HICKMAN COUNTY, TENNESSEE

GREG GONZALES, In his official)
capacity as Commissioner-In-)
Possession of Sentinel Trust Company)
and Receivership Management, Inc.,)
Receiver of Sentinel Trust Company,) No. 4980
Plaintiffs,)
v.)
DANNY N. BATES, et al.,)
Defendants.)

**PLAINTIFFS' MOTION FOR ADDITIONAL RELIEF REGARDING SALE OF
PROPERTIES SUBJECT TO JUDGMENT LIENS¹**

I. Introduction

On July 30, 2010, this Court entered an Order of Sale which instructed that Sheriff's Sales be had in relation to the properties upon which judgment liens had been established as a way of executing upon a previously entered final judgment of \$4.395 million against Danny Bates. On October 12, 2010, the Sheriff of Hickman County conducted a public auction/sheriff's sale of one tract of property located in Hickman County, Tennessee (identified as Tract Five to the Court's May 24, 2010 Implementation Order). No bids were received. On October 26, 2010, the Sheriff of Lewis County conducted a public auction/sheriff's sale of three tracts of property located in Lewis County, Tennessee (identified as a) Tract One, b) Tract Two and Three; and c) Tract Four in the Court's May 24, 2010 Implementation Order). No bids were received.

¹ Plaintiffs are aware that an Order of Court, entered on the docket November 9, 2010, gave twenty (20) days for the Commissioner-in-Possession and Receiver to submit a status report in the In re: Sentinel Trust Company receivership action (#4781). That Report will be sent for filing and hand-delivered to Judge Kurtz's chambers on or before November 29, 2010.

The Court's July 30, 2010 Order of Sale expressly stated that if the auction of the 205 Bastin Road property (and presumably the other properties as well) was unsuccessful, then it would consider, upon motion, other procedures for the sale of the property(ies). Through this Motion, Plaintiffs' request additional relief regarding their ability to sell the properties subject to the judgment liens.

II. Relevant Facts

In the Court's April 7, 2010 Memorandum and Order, Danny Bates had a \$4.395 million judgment entered against him for conversion and breach of fiduciary duties. The record further indicates that a material portion of the money converted -- at least \$600,000 -- was used to build the mansion located at 205 Bastin Road, Hohenwald, Lewis County, Tennessee.² The Court's April 7, 2010 Memorandum and Order also held that all of the properties at issue (and which were subject to the unsuccessful sheriff's sales) were fraudulently conveyed from Danny Bates to others. The Court's April 7, 2010 Memorandum and Order set aside all the fraudulent transactions and restored title in those properties to Danny Bates.

Since the Court's Order of June 29, 2010, and in light of Mr. Bates' abandonment of the 205 Bastin Road house, Plaintiffs have been in possession of that property to protect and preserve its condition. Those efforts have been, and continue to be, at significant cost to the Sentinel Trust Receivership Estate, and, in turn, to the claimants of that estate.³

² As the Court is aware, Mr. Bates was found guilty of criminal theft with criminal restitution being set at \$600,000 -- none of which has been paid.

³ Insurance, alarm systems, property maintenance, utilities (electric/propane/etc.) and attendant costs and expenses are approximately \$21,800 to date, and are estimated at approximately \$380 on a monthly basis going forward. Additional insurance expenses of approximately \$4,000 every six months can also be anticipated. Affidavit of Jeanne B. Bryant (attached as Exhibit 1 at ¶7).

Each property that was placed for bid in the sheriff sales had minimum bids established and publicized. The 205 Bastin Road property had the \$750,000 minimum bid established by the Court's July 30, 2010 Order of Sale. The other three tracts had "50% of taxed appraised value" minimum bids set by the sheriffs, pursuant to T.C.A. §26-5-115. As noted previously, no bids were received.

As stated in the attached Jeanne B. Bryant Affidavit, prior to the sheriff sales some interest was expressed on various of the properties, particularly the 205 Bastin Road property. But the issue of the sales being subject to Mr. Bates' exercise of a right of redemption caused potentially interested individuals not to further pursue or bid on the properties. Indeed, the only specific amount communicated to the Receiver regarding the 205 Bastin Road property was communicated as being conditioned upon the right of redemption being waived. Bryant at ¶4. Also, two of the undeveloped tracts (one in Hickman County -- Tract Five in the Court's Implementation Order -- and the other in Lewis County -- Tract Four in the Court's Implementation Order) had deeds of trust placed on the properties, after the fraudulent transfer, in favor of the Wayne County Bank. Those deeds of trust have created an impediment to anyone bidding upon or being interested in those properties. Bryant Aff. at ¶5.

III. Request for Relief in Aid of Selling Property for Debt

The traditional method of selling the subject properties to pay down Danny Bates \$4.395 million judgment -- sheriff sales -- has not worked.

a) Consideration of Relief Previously Requested

As an alternative procedure, Plaintiffs would request consideration of what was requested in their July 13, 2010 Motion for Order of Sale and Attendant Relief -- ordering the divesture of title (and implicitly the waiver of the right of redemption as to those

properties) as to all four tracts from Danny Bates and placing title in the name of the Commissioner-in-Possession (see T.C.A. §16-1-108; T.C.A. §66-3-308(a)(3)) and then allowing the Commissioner-in-Possession to market the properties, obtain contracts for the purchase of the properties and submit those contracts for further review and approval by the Court. In the July 30, 2010 Order of Sale the Court stated that:

[t]he Court has considered plaintiff's contentions regarding other alternatives to the auction sale, but finds it does not now have the authority to order alternative procedures. (emphasis added)

Later in that same order, the Court expressed willingness to consider other procedures if the sheriff's sales proved to be unsuccessful. Accordingly, for the reasons set forth in Plaintiffs' July 13, 2010 filing, Plaintiffs' request an order divesting Danny Bates of title to the four subject properties and vesting title in the Commissioner-in-Possession.

b) Additional Alternative Procedure -- Order the Waiver of the Right of Redemption

As another alternative, Plaintiffs would request the Court enter an order that waives the right of redemption and gives the Commissioner-in-Possession authority to market the properties and to sell each property upon further approval of the Court. The right of redemption can be waived through order of Court. T.C.A. §66-8-101 states as follows:

Right of redemption – Waiver. Real estate sold for debt shall be redeemable at any time within two (2) years after such sale:

...

(2) . . . unless, upon application of the complainant, the court orders that the property be sold on credit of not less than six (6) months, nor more than two (2) years; and that, upon confirmation thereof by the court, no right of redemption or repurchase shall exist in the debtor or the

debtor's creditor, but that the title of the purchaser shall be absolute.

See also T.C.A. §21-1-803. In the Tennessee Jurisprudence treatise, the above-quoted statutory provision, allowing waiver of the right of redemption through court order, is explained as follows:

The statute intends to benefit both the debtor and the creditor – the first [i.e., the debtor] by exposing to sale his property under such circumstances as promise an approximation to its value, by giving time for payment to the purchaser; and [the second] the creditor, by an assurance that an absolute sale will more nearly pay his debt. That buyers will give more for an absolute than a contingent estate, was a motive to the passage of the act . .

21 Tenn. Jur., Redemption §25 at p. 542 (brackets added). Accordingly, the interests of maximizing the amount from the sale of the properties, maximizing the amount paid to the Sentinel Trust Estate and its claimants and providing certainty to the purchaser(s) of the properties are all furthered by the waiver of the right of redemption.

Other reasons support the Court ordering that a sale of the properties include a waiver of Danny Bates' right of redemption/equity of redemption⁴ First, Danny Bates has been found guilty of stealing the money that built the 205 Bastin Road mansion and has been found liable for the fraudulent transfer of that and other properties beyond the reach of his creditors and/or victims of his theft/fraud. Presumably, the right of redemption was not established to protect a theft's interest in the subsequent sale of the

⁴ One's equity of redemption, based in the common law notion that one can redeem an estate after forfeiture of that estate, has been held, for the purposes of waiver analysis, to include or to be synonymous with the statutory right of redemption under T.C.A. §66-8-101. Swift v. Kirby, 737 S.W.2d 271, 277 (Tenn. 1987); Nicholas v. Springfield Prod. Credit Ass'n, 737 S.W.2d 277, 278 (Tenn. 1987).

stolen property or to protect the interest of a fraudulent transferor relating to the property fraudulently conveyed.

Moreover, if the right of redemption is not waived, and if Danny Bates exercises it, the practical effect will be a continued renewal and enforcement of the judgment liens against whatever property is "redeemed." Setting aside the issue of where he might find the money to do so without first addressing issues such as the payment of his criminal restitution, Danny Bates' exercise of a right of redemption, through payment of money to redeem whatever property he chooses, would result in that money being paid to the Commissioner-in-Possession, but would far from extinguish the \$4.345 million judgment debt. Upon Bates' redemption of any property and his regaining title to the particular piece of property, Plaintiffs would merely reinstitute collection proceedings as against the property that Bates had redeemed. Given the size of the judgment against him, it is very unlikely that Mr. Bates would ever exercise his right of redemption and, therefore, the waiving of the right of redemption does not take away from Danny Bates anything that he reasonably can be expected to exercise.

Finally, if the properties sell subject to the right of redemption -- and, again, given the recent attempts of sheriff sales, it is questionable as to whether they will -- the Sentinel Trust Receivership would not be able to distribute the sale proceeds,⁵ and would have to stay open for the entire two-year redemption period perchance Danny Bates wanted to redeem any or all of the properties sold.

⁵ It is undersigned counsel's understanding that if the sale of the properties is subject to the right of redemption and is handled through the local Sheriff's Office or Clerk and Master's Office, then the proceeds of any sale would be held by the Sheriff's Office or Clerk and Master's Office for the two-year redemption period.

Therefore, to allow for the sale of the subject properties and to allow for the sales to yield the most for the Sentinel Trust Receivership Estate claimants, and to do so in a fashion that provides certainly to the purchaser and that advances this receivership estate towards closure, Plaintiffs seek the additional relief that:

- 1) The Court order that the right of redemption as to all the subject properties is waived;
- 2) Plaintiffs be allowed to market and advertise the subject properties for sale in a commercially reasonable fashion;
- 3) Plaintiffs be allowed to market and advertise that those sales will be without the right/equity of redemption;
- 4) Plaintiffs be allowed to market and advertise that the sale of any particular property be upon credit of not less than six (6) months, nor more than two (2) years; and
- 5) Plaintiffs be allowed to present to the Court, upon further motion, the best offer obtained for approval and confirmation and to seek further order of Court instructing Danny Bates to take all actions necessary to transfer full title from his name to the name of the purchaser.

c) Addressing Wayne County Bank Deeds of Trust

As noted earlier, two of the subject properties (Tract Four and Tract Five in the Court's May 24, 2010 Implementation Order)⁶ are subject to liens/deeds of trust in favor of the Wayne County Bank. Those deeds of trust issued in July 2007, after the October 2004 fraudulent transfers from Mr. Bates to an entity controlled by him -- the Bates

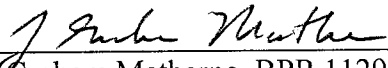
⁶ The 205 Bastin Road house (Tract One to the Court's May 24, 2010 Implementation Order) and the 134 acre tract adjacent to the 205 Bastin Road house (Tract Two and Tract Three to the Court's May 24, 2010 Implementation Order) are not subject to any other lien, deed of trust or encumbrance (other than local tax debt).

Family Trust. The existence of these deeds of trust have inhibited the sale of these two properties. Bryant Aff. at ¶5. Whether the Wayne County Bank deeds of trust are subject to the protections afforded under T.C.A. §66-3-309, and what options might be available to the Plaintiffs regarding continued pursuit of these particular parcels, are matters in need of factual development and the Sentinel Trust Receiver has issued a document subpoena upon the Wayne County Bank Custodian of Records requesting information concerning the situation that should aid in making those determinations. Bryant Aff. at ¶6. Through this Motion, Plaintiffs request the ability to further request relief consistent with what is revealed factually when review of the requested documents is had.

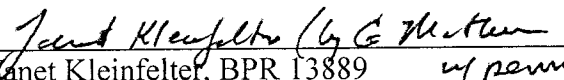
IV. Conclusion

Plaintiffs request entry of an order granting the relief sought herein.

Respectfully submitted,



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*Counsel for Commissioner-in-Possession of
Sentinel Trust Company*

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing has been served upon the following, via U.S. Mail, on this the 24th day of November, 2010.

David D. Peluso
P.O. Box 250
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Danny Bates
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Larry Stewart
Adams and Reese/Stokes Bartholomew
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Nashville, TN 37219

Deanna June Bates
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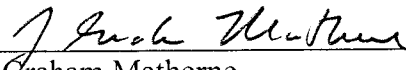
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Clifton Todd Bates
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Audra Flippo
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J. Graham Matherne

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AFFIDAVIT OF JEANNE B. BRYANT

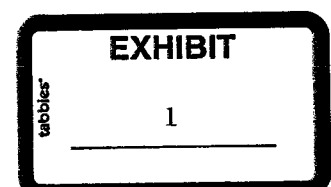
Having been duly sworn, I, Jeanne B. Bryant, do attest to the following:

1. I am of majority age and have first hand knowledge of the contents of this Affidavit.

2. I am President of Receivership Management, Inc. which is the Sentinel Trust Company Receiver.

3. There have been two sheriff sales (October 12, 2010 in Hickman County and October 26, 2010 in Lewis County) where four pieces of property titled in Danny Bates' name were attempted to be auctioned to address judgment liens which exist in favor of the Sentinel Trust Commissioner-in-Possession. Those sheriff sales did not result in any of the properties being bid upon.

4. Prior to those attempts to sell the properties at sheriff sales, I or my staff had received various inquiries concerning the properties, particularly the 205 Bastin Road property. We were asked whether the right of redemption would remain on any property



sold and we have responded that, to our understanding, the right of redemption would remain. The potential bidders, when so informed, seemed to lose interest in pursuing matters further. The one instance in which a specific and material amount was communicated to me as a potential offer upon the 205 Bastin Road property was specifically communicated in terms of being conditioned upon the waiver of the right of redemption.

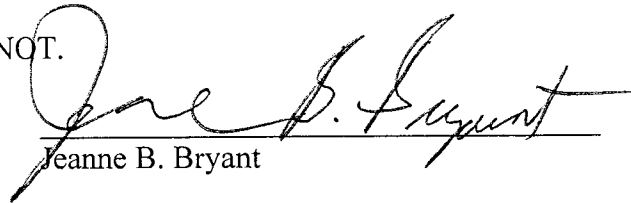
5. Similarly, when individuals became aware of the existence of Wayne County Bank deeds of trust on two of the undeveloped tracts of land subject to the judgment liens, they became disinterested in pursuing any bid on these properties.

6. We need additional information concerning the Wayne County Bank loan to which those two properties are pledged to determine what options exist regarding potential recovery by the Sentinel Trust Estate as to those properties. To that end, a subpoena for records relating to that Wayne County Bank loan has just recently been sent out to that bank's Custodian of Records.

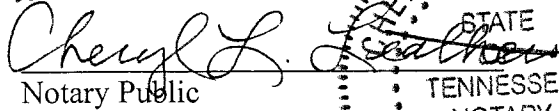
7. Since the end of June 2010, when the Court, through order, allowed the Commissioner-in-Possession of Sentinel Trust/the Sentinel Trust Receiver to take possession of the 205 Bastin Road property, a material amount of money has had to be spent on maintenance, upkeep and protection of that property. The amount spent, to date, totals approximately \$21,800, which include necessary items such as insurance, utilities (electric/propane/etc.), alarm system, monitoring trips, and property maintenance. When broken down to an estimation of monthly expense going forward, I would estimate the amounts to be spent to be approximately \$380 per month, but dependent upon the need to

renew the insurance coverage, the cost could be substantially more -- approximately \$4,000 per six months of coverage.

FURTHER AFFIANT SAYETH NOT.

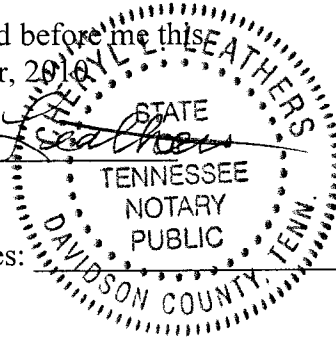

Jeanne B. Bryant

Sworn to and subscribed before me this
23rd day of November, 2010


Notary Public

My Commission Expires:

45409079.4



My Commission Expires NOV. 7, 2012